

Exhibit 4

DANIEL MASSOGLIA

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CHICAGO, IL 60647

January 9, 2017

Dionne Hardy
FOIA Office
Office of Management and Budget
1800 G Street NW, Room 9026
Washington, DC 20503

<sent to FOIA Office and OMB Director Mick Mulvaney via US Mail >

Re: OMB Freedom of Information Act Request 2017-320 - Appeal

Dear Ms. Hardy:

Good afternoon. I represent Matthew Chapman, a FOIA Requester residing in the Northern Judicial District of Illinois. This letter is an appeal regarding Freedom of Information Act ("FOIA") Request OMB FOIA 2017-320, sent July 11, 2017, denied with invitation to narrow November 13, 2017, narrowed November 29, 2017, and ignored since.

This letter appeals your agency's initial denial of my client's Request, on November 13, 2017, and your agency's failure to timely respond to my client's Narrowed Request, sent November 29, 2017. My client seeks production of all responsive documents to his initial Request, or, in the alternative, production of documents responsive to the Narrowed Request.

The Requests

My client's initial Request was sent July 11, 2017 and was assigned a tracking number by the Office of Management and Budget ("OMB") July 13, 2018. "Transmission and Acknowledgment," attached as **Exhibit A**; "Request," attached as **Exhibit B**. The Request sought:

...the following metadata for all emails sent or received in the month of January 2017 by or from persons with email addresses ending "@omb.eop.gov": 1. To address; 2. From address; 3. CC; 4. BCC; and 5. Date and Time.

Exhibit B.

On November 13, 2017, following my repeated attempts to communicate with OMB, OMB denied the Request as overly broad and issued an invitation for my client to narrow his parameters. See "OMB Denial Letter," attached as **Exhibit C**. On November 29, 2017, my client reduced the scope of the Request by limiting its time frame to only 7 days, a 78% reduction in scope. See "Narrowed Request," attached as **Exhibit D** ("My client narrows his request in breadth as follows: for the same search terms, he reduces its scope from the entirety of January 2017 to metadata for the dates January 19-24 and January 30").

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Breakdown in Communications on the Requests

Informal attempts to obtain a timely determination on the initial Request were not fruitful. On a single August 18, 2017 phone call, I spoke with OMB FOIA Officer Dionne Hardy, who told me that while there was then no official determination in place, there was a “note” on my client’s Request indicating that it should be denied as too broad. At that time, I informed Ms. Hardy that I needed to consult with my client regarding his willingness to narrow the Request, and also offered to consult with OMB’s counsel regarding the Request. We agreed to talk further but I was, despite repeated attempts, unable to reach either Ms. Hardy or OMB Public Liaison and Chief FOIA Officer Heather Walsh for further discussion.

In the intervening months, OMB ignored multiple calls, emails, and voice messages related to the Request. On August 11, August 18, September 1, September 25, and October 14, 2017, I made phone calls to OMB FOIA Officer Hardy at (202) 395-3642, the telephone number listed on the White House’s FOIA page for OMB. With the exception of the returned August 18 phone call, OMB’s FOIA Office did not answer or return these calls.

Also, on August 18, September 1, September 25, and October 27, 2017, I made phone calls to OMB’s Public Liaison and Chief FOIA Officer Heather Walsh at (202) 395-7545, the telephone number listed on the White House’s FOIA page for OMB. I left messages with OMB personnel or an electronic system on each occasion, but OMB did not return or answer these phone calls.

In emails sent August 9, August 18, August 22, August 31, and October 27, 2017, I sought to discuss the Request with OMB personnel; OMB’s FOIA Office did not reply to any of these emails.

On November 13, 2017, without continued conversation as the parties had agreed, OMB issued a denial in which it invited Mr. Chapman to submit a request with narrowed parameters. OMB did not respond to Mr. Chapman’s November 29, 2017 Narrowed Request within 20 working days, and did not respond to an email message sent December 8, 2017 regarding this Narrowed Request.

Nature of the Appeal

Mr. Chapman appeals: 1) the delay in rendering a determination on his Narrowed Request, and seeks a timely determination of this appeal; and 2) the denial of his initial Request, which was likely made with an incorrect understanding of nature of the data the Request seeks.

To the first component of this appeal: although FOIA requires agencies issue a determination on a given request within 20 working days, neither Mr. Chapman’s original Request nor his Narrowed Request was handled properly within this 20-day time period. 5 U.S.C. § 552(a)(6)(A)(i). The July Request was not responded to until November, and the November Request was not responded to within 20 working days, and it has not yet been addressed. In neither circumstance did OMB avail itself of a legal route to extend the response time period—it did not offer notice that “unusual circumstances” apply to this Request, nor did it toll the response period to obtain additional information from the Requester or to negotiate issues related to fees. 5 U.S.C. §§ 552(a)(6)(B), (a)(6)(A)(I)-(II). OMB should respond to this appeal within the appropriate time

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frame set out in the statute, and, if it does not overturn its denial of the initial Request, should timely approve the Narrowed Request. 5 U.S.C. § 552(a)(6)(A)(ii).

To the second component of this appeal: while the Request explicitly seeks only metadata—the “to, from, cc, bcc, date, and time” information about email messages—the OMB Denial Letter proceeds as if my client had requested email messages’ contents themselves. Many of the justifications that OMB used to deny the Request stem from this faulty initial assumption.

The OMB Denial Letter states that:

it is highly likely that a significant percentage of responsive documents could be exempt from mandatory disclosure under FOIA. In particular, documents are likely to be exempt under FOIA Exemption 5 as being covered by... the deliberative process privilege, the attorney-client communications privilege, and/or the attorney-client work product privilege.

Exhibit C.

Because the Request does not seek the content of emails, however, FOIA Exemption 5 and these privileges cannot apply. The Request does not seek contents of letters or memoranda; it simply does not cover the contents of communications (deliberative or otherwise). No privileged information is requested—none could be. The narrow, metadata-only parameters of the Request will not require Exemption 5 analysis, or indeed significant exemption analysis of any kind. It is not “highly likely” that a significant percentage of responsive documents could be exempt, and the OMB Denial Letter’s claims about the amount of time needed to review exemptions are made in error.

The OMB Denial Letter further errs when it describes the burden and time-cost to OMB in processing the Request, which it states is overly broad. While my client’s Narrowed Request reduces the breadth of the Request by 78%, the volume of data encompassed in *either* version of the Request will not burden a competent IT department, which would possess tools to manage, organize, and query large volumes of information at once. My client, a senior data engineer at a technology company, offered his assistance to OMB regarding the Request, but, as described above, the agency’s personnel have been difficult or impossible to get in touch with for conversations that could have avoided the ongoing difficulty coming to a resolution on this matter.

I look forward to receiving a determination on this appeal. With questions, please contact me at 336-575-6968 or dmassoglia@gmail.com.

Best,
Daniel Massoglia
Counsel for Requester Matthew Chapman

Exhibit A



Daniel Edward Massoglia <dmassoglia@gmail.com>

FOIA Request from Matthew Chapman - Email Metadata

11 messages

Dan Massoglia <dmassoglia@gmail.com>

Tue, Jul 11, 2017 at 4:10 PM

To: OMBFOIA@omb.eop.gov

Bcc: Matt Chapman <[REDACTED]>


Dear FOIA Officers,

Please see attached FOIA request, which I send on behalf of my client, FOIA activist and data engineer Matthew Chapman.

Nice speaking with your office today and I hope you have a pleasant evening.

Thanks,
Daniel Massoglia
Counsel for Matt Chapman

—
Daniel Massoglia
Attorney and Counselor at Law

 **Chapman_OMB.pdf**
463K

FN-OMB-FOIA <OMBFOIA@omb.eop.gov>

Thu, Jul 13, 2017 at 9:00 AM

To: Dan Massoglia <dmassoglia@gmail.com>

Greetings: This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated July 11, 2017 and received in OMB's FOIA office on July 12, 2017. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 2017-320.

Sincerely,

Dionne Hardy

Exhibit B

DANIEL MASSOGLIA

ATTORNEY AT LAW

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F: (312) 256-2010
E: DMASSOGLIA@GMAIL.COM

1800 S. CARPENTER ST.
SUITE 202
CHICAGO, IL 60608

Dionne Hardy
&
Heather Walsh
725 17th Street NW
Suite, 9204, 904
Washington, DC 20503
(202) 395-3504 (fax)

<transmitted electronically to OMBFOIA@omb.eop.gov>

July 11, 2017

Re: Freedom of Information Act Request from Matthew Chapman – Jan '17 @omb.eop.gov
Metadata

Good evening Ms. Hardy,

Thank you for your guidance over the phone earlier.

This is a Freedom of Information Act request made to the Office of Management and Budget under 5 U.S.C. § 552 *et seq* and in light of governing Chapter III regulations outlined in 5 C.F.R. 1303. I am legal counsel to Matthew Chapman and submit this request on his behalf.

Mr. Chapman is a senior data engineer and FOIA activist who sends this request as a non-commercial, non-partisan effort in the public interest. His work seeks to help the public understand the operations of government, including the Executive Office of the President and the Office of Management and Budget. Mr. Chapman's other work in this field has helped the public interact with governments of Texas, Illinois, and elsewhere.

This request seeks only the metadata from the search described below—it explicitly does not request the content or contents of any email. Please inform my office if any fee in processing the request is expected.

Specific Request:

Please provide the following metadata for all emails sent or received in the month of January 2017 by or from persons with email addresses ending "@omb.eop.gov":

1. To address;
2. From address;
3. CC;

DANIEL MASSOGLIA

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E: DMASSOGLIA@GMAIL.COM

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CHICAGO, IL 60608

4. BCC; and
5. Date and Time.

My client is happy to make himself available and assist in creating appropriate database queries or scripts to make this matter easier to manage. If your office prefers to navigate this somewhat novel request in concordance with the requester please let us know times at which you might be available for a conference call or other form of meeting to begin this effort.

Requested records should not be subject to exemptions or exclusion under statute or to limitation by federal regulations present or pending.

With questions, feel free to reach me at 336 575 6968 during business hours and dmassoglia @ gmail.com at any time.

Thank you,
Daniel Massoglia

Exhibit C



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 13, 2017

Mr. Daniel Massoglia
Attorney at Law

Sent via email: dmassoglia@gmail.com

Dear Mr. Massoglia:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated July 11, 2017, which was received in this office on July 12, 2017 and assigned tracking number 17-320. Your request seeks metadata for all emails sent or received in the month of January 2017 by or from persons with an email address ending with "omb.eop.gov."

Please be advised that this is an overly broad request. The request is not limited to any particular topic (or topics), and instead asks for data regarding emails either sent or received by anyone employed by OMB, which has several hundred employees. In order to comply with this request, a voluminous number of emails would need to be searched and processed. In addition, given the breadth of the request as well as the nature of requested material, it is highly likely that a significant percentage of responsive documents could be exempt from mandatory disclosure under FOIA. In particular, the documents are likely to be exempt under FOIA Exemption 5, as being covered by one or more of the following privileges (among other potentially-applicable privileges): the deliberative process privilege, the attorney-client communications privilege, and/or the attorney work product privilege.

As a result, the process of OMB conducting a search for documents that are potentially responsive to this overly broad request, and conducting a review of the potentially responsive documents to determine which materials are responsive and exempt from mandatory disclosure (and, in the case of the exempt materials, conducting a further review to determine which materials are appropriate for discretionary release), and coordinating and consulting with other affected offices (outside of OMB) that have a potential interest in such documents, will likely be very time-consuming and overly burdensome.

Accordingly, unless you are able to narrow this request by providing more specificity, such as a subject matter, we will administratively close the file for this request on December 27, 2017. If you would like to discuss ways in which OMB could search for a more narrow set of documents that will allow us to provide you timely access to information you are seeking, please feel free to contact us at (202) 395-FOIA, prior to submitting a modification or a new request.

Sincerely,

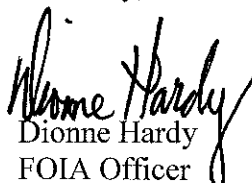

Dionne Hardy
FOIA Officer

Exhibit D

Daniel Massoglia <dmassoglia@gmail.com>
To: FN-OMB-FOIA <OMBFOIA@omb.eop.gov>

Wed, Nov 29, 2017 at 11:59 AM

Hi Dionne,

Thank you for your response.

My client narrows his request in breadth as follows: for the same search terms, he reduces its scope from the entirety of January 2017 to metadata for the dates January 19-24 and January 30.

Please provide an accounting of the quantity of records and estimated time required to review these records. As this request seeks metadata, not including subject lines, and not content of OMB communications, it should not raise privilege, exemption, and other related concerns you have identified.

It is likely that this search will return a large number of records, but in such a format that they may be easily reviewed and produced. I want finally to reiterate my client's offer to provide technical expertise (he is a senior data engineer in the private sector) if managing and reviewing a large volume of non-exempt data raises issues and your team would like to trade ideas on a production.

Thank you,
Daniel Massoglia

[Quoted text hidden]

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Daniel Massoglia
Attorney at Law
